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Paper No. 17

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In re Application of  
Nagel, Robert H.  
Application No. 09/577,533  
Filed: May 24, 2000  
Attorney Docket No. NAGEL 202

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 15, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office action mailed August 13, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on November 14, 2003. A Notice of Abandonment was mailed March 4, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.<sup>2</sup>

<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The instant petition lacks item (1). The amendment submitted to the Examiner on July 15, 2004 failed to place the above-identified application in prima facie condition for allowance. A proper reply to a final rejection under 37 CFR 1.113 may be: (1) an amendment, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee); or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. Petitioner must submit one of the above documents in order to revive the above-identified application. Enclosed in an Advisory Action issued by the Examiner.

Further correspondence with respect to this matter should be addressed as follows:

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By fax:                   (703) 872-9306  
                              ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.



Liana Chase  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure:    Advisory Action (PTOL-303)

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<sup>2</sup> See MPEP 711.03(c)(III)(C) and (D).